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Linda McCulloch
Superintendent

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TO: District Superintendents and Clerk/Business Managers
County Superintendents

FROM: Denise Ulberg, Administrator
School Finance Division

RE: **Tuition under HB 83 – FAQs for FY2005-06**

This memo answers some common questions concerning implementation of HB 83 for FY2005-06 and future years. In this memo:

- Background
- "State- and Court- Placed Student"
- Residency
- Tuition Rates and Payments

BACKGROUND

In the 2005 Legislative Session, HB 83 made the Office of Public Instruction responsible for tuition payments for a student placed outside the student's district of residence by a state agency or court, including tribal court. Prior to the passage of this bill, county superintendents were responsible for tuition payments for "state-placed" students. The bill is effective for attendance starting in school year 2005-06, so county superintendents will pay tuition for students who attended under placements during school year 2004-05.

MCA 20-5-321 states,

"(1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

. . . (d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or (e) the child is required to attend school outside of the district of resident as the result of a placement in foster care or a group home licensed by the state."

STATE- and COURT- PLACED STUDENT

Q: What is a state placement or a court placement for purposes of OPI tuition payments under HB83?

A: MCA 20-5-321 (1)(d) defines the state- and court-placement circumstances for which OPI provides tuition payments. State agency placements usually involve a DPHHS caseworker who places a student into a group home or foster care licensed by Montana. Court placements involve a juvenile probation officer or a tribal or youth court judge.

MCA 20-5-321(1)(e) also provides state-paid tuition for any student placed in a foster care or state-licensed group home outside their district of residence-- regardless of who initiates the placement. Therefore, even students placed in a group home by a parent are covered.

Q: If a student is placed in a group home or foster care within his own district of residence, can the district claim tuition for the student?

A: No, only non-resident students can be claimed for tuition payments.

Q: How does OPI determine whether the student's placement falls under 20-5-321 (1)(d) or (1)(e)?

A: The Attendance Agreement form (FP-14) must be signed by a caseworker or representative of the court, unless the placement is a parental placement in a group home. In that case, the form must indicate the parent made the group home placement, and OPI will determine if verification of the placement with DPHHS is necessary.

RESIDENCY

Q: How is the residence of the student determined?

A: MCA 1-1-215 (4) and (5) define a minor's residence as follows:

(4) The residence of a minor's parents or, if one of them is deceased or they do not share the same residence, the residence of the parent having legal custody or, if neither parent has legal custody, the residence of the parent with whom the minor customarily resides is the residence of the unmarried minor. In case of controversy, the district court may declare which parental residence is the residence of an unmarried minor.

(5) The residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or that of the minor's guardian.

Q: What is the district of residence for students of whom DPHHS has temporary custody?

A: When custody has been temporarily granted to DPHHS but the parental rights have not been terminated, residency is still determined by the residence of the parents.

Q: What is the district of residence for a student whose parental rights have been permanently terminated by the court?

A: If the state has temporary custody of a student whose birth parents' parental rights have been permanently revoked, the student's district of residence is the location of the court that terminated the parental rights.

When the parents' rights are terminated, MCA 42-2-617 states that an order terminating parental rights has to award custody to the DPHHS, other agency or a prospective adoptive parent. According to 43 AG 36, "for a child whose parents' rights have been terminated and who is in the custody of the department pending permanent placement, the child's residence is the same as the physical location of the district court which ordered the termination and which maintains jurisdiction of the case until permanent disposition."

TUITION RATES AND PAYMENTS

Q: Who will pay tuition for state- and court-placed students who attended during the 2004-2005 school year? What money is to be used to pay the tuition?

A: The county superintendents must pay for placed students who attended in school year 2004-05. That was required by previous law and wasn't changed by HB83. County superintendents pay tuition using the elementary or high school countywide equalization accounts, which are supported by statewide mill levies of 33 mills for elementary and 22 mills for high school.

Q: What is the new process for a district to claim OPI payments for state- and court-placed students beginning with attendance in school year 2005-06?

A: First, for each non-resident student who was placed by a parent, state agency or court as described in MCA 20-5-321 (1)(d) and (1)(e), and is attending a school of the district during FY2005-06, the district should submit a Student Attendance Agreement (FP-14: <http://www.opi.mt.gov/PDF/SchoolFinance/forms/FP14Fillin.pdf>) to OPI for approval. If the situation qualifies for "special rates" (for example, special education services or higher-than-average cost services for non-disabled students), the district must attach a "Special Tuition Rates" form (FP-14A: <http://www.opi.mt.gov/PDF/SchoolFinance/forms/FP14AFillin.pdf>) to detail the additional costs.

Second, the district must submit a Tuition Report (FP-15: <http://www.opi.state.mt.us/pdf/SchoolFinance/forms/FP15.pdf>) to OPI. This form acts as a claim for tuition reimbursements and must be submitted to OPI no later than June 30 of the year following the year of attendance.

Q: How much does OPI pay for tuition for placed students?

A: OPI pays the approved tuition rates for the district's regular education rate plus special rate ("add-on"), as shown on the FP-14 and FP-14A forms. Regular ed rates are based on the per-ANB entitlement amounts, which change each year. OPI posts the maximum tuition rates for regular education students at <http://www.opi.mt.gov/SchoolFinance/tuition.html>. Special Add-On rates are based on the amount specified by the FP-14A form.

Q: If the student isn't enrolled all year, can the district claim the full annual tuition?

A: No, tuition is prorated for the actual number of days the student is enrolled during the year. The number of days enrolled is reported on the Tuition Report (FP-15).

Q: When will OPI pay the tuition? How will it be paid to the district?

A: After receiving the Tuition Report (FP-15) during the year following the year of attendance, OPI will calculate the tuition owed and make a payment to the district. The payment will be made in a single payment along with a regular monthly payment for direct state aid funding. Since the majority of tuition for placements will fall under MCA 20-5-324(6)(b) and (6)(c), OPI will send the tuition portion of the payment for deposit into the district's general fund (01). The over-schedule transportation portion of the payment, if any is indicated on the FP-14 Attendance Agreement form, will be deposited in the district's transportation fund (10). OPI staff will also notify the clerk when the tuition payment has been made.

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